



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 30, 1994

Ms. Helen M. Gros  
Senior Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR94-614

Dear Ms. Gros:

The City of Houston (the "city") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 26455.

The city received a request for information relating to "calls for service and surveillance or investigations at 1319 Wichman, Houston" by the Houston Police Department from January 1, 1994, to the date of the request. The city states it has already released information concerning a burglary and theft investigation at that address. The city also indicates that it has released first page offense report information concerning a narcotics investigation connected with that address. *See Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist. 1975], writ *ref'd n.r.e. per curiam*, 586 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, the city contends that other information concerning the narcotics investigation is excepted from disclosure under section 552.108.

Section 552.108 excepts from disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and;]

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. Open Records Decision No. 127. In closed cases, however, the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision No. 216 (1978) at 4. The pertinent question is if release of the information would undermine legitimate interests relating to law enforcement or the investigation or prosecution of crime. Open Records Decision No. 518 (1989).

The city submitted various documents to this office. We assume from the city's correspondence that the only information at issue is the information related to the narcotics investigation that is not first page offense report information.<sup>1</sup> The city has provided information showing prosecution is pending in regard to the narcotics offense. It has also provided an affidavit from the prosecutor explaining how release of the information at issue could interfere with the prosecution of the narcotics case. After a review of the information at issue, we conclude that section 552.108 excepts this information from required disclosure. We also note that because section 552.108 is discretionary with the governmental body claiming the exception, the city may choose to voluntarily release all of the information except for those records that are confidential under section 552.101.<sup>2</sup> Gov't Code § 552.352; Open Records Decision No. 216 (1978) at 2.

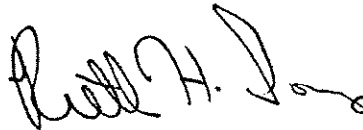
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<sup>1</sup>We note that the location of information is not determinative of its status. The information identified by the court in *Houston Chronicle Publishing Co.* as information generally found on the first page of the offense report must be released regardless of where it is found. Open Records Decision No. 127 at 5. We have enclosed a summary of Open Records Decision No. 127 that outlines the information that is open and closed to the public.

<sup>2</sup>The records submitted to us for review also include information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the Houston Police Department, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MAR/rho

Ref.: ID# 26455

Enclosures: Summary of Open Records Decision No. 127  
Submitted documents

cc: Ms. Leora Kahn  
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(w/o enclosures)

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purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information data that was generated by the federal government or another state may not be made available to the requestor by the city except in accordance with federal regulations. *See* Open Records Decision No. 565. Furthermore, any criminal history record information received from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.